

**MINUTES OF THE  
ADMINISTRATIVE RULES REVIEW COMMITTEE**  
Tuesday, January 14, 2003 – 9:00 a.m. – Room 416 State Capitol

**Members Present:**

Sen. Howard A. Stephenson, Senate Chair  
Rep. David Ure, House Chair  
Sen. Mike Dmitrich  
Sen. Ed Mayne  
Rep. Judy A. Buffmire  
Rep. James R. Gowans  
Rep. Merlynn T. Newbold  
Speaker Martin R. Stephens

**Members Absent:**

President Al Mansell  
Sen. Michael G. Waddoups

**Staff Present:**

Ms. Susan Creager Allred, Associate General Counsel  
Ms. Cassandra N. Bauman, Legislative Secretary

**Note:** A list of others present and a copy of materials can be found at <http://www.image.le.state.ut.us/imaging/history.asp> or by contacting the committee secretary at 538-1032.

**1. Committee Business**

Chair Stephenson called the meeting to order at 9:10 a.m.

**MOTION:** Sen. Dmitrich moved to approve the minutes of the December 3, 2002 meeting and the December 16, 2002 meeting.

Ms. Allred indicated that Mr. Don Rollins, Board of Trustees, South Valley Training Company, requested an amendment to the December 16, 2002 minutes. She distributed "Proposed Amendments to Draft Adm. Rules Minutes." Sen. Dmitrich withdrew his motion due to a lack of time for discussion.

**2. Insurance Rate Paid by Participating Retired State Employees**

Sen. Mayne introduced the issue. He explained that there appears to be a conflict between a rule written by the DHRM (Department of Human Resource Management) and the statutory benefits to state employee retirees provided in statute.

Mr. Skip Nielson, retired state employee, addressed the Committee via speakerphone. He reviewed R477-8-7 and UCA 67-19-14, expressing concern for the health and life insurance for retired state employees. He explained that statute allows for retired state employees to receive benefits at a certain rate for a specified amount of sick leave, that the employing department shall provide the same health and life insurance benefits the employee had at the time of retirement, and that statute specifically states that any costs for the act shall be borne by the state agency which the retiree worked for. He indicated conflicts between rules, practice, and sections of statute. He responded to questions.

Mr. Con Whipple, DHRM, indicated that the Department was prompted by the intent language of S.B. 198, 2000 General Session, in writing the rule. He responded to questions.

Mr. Kent Bishop, Governor's Office of Planning and Budget, read the intent language for H.B. 1, 2001 General Session, which states "It is further the intent of the Legislature that employees enrolled in the

PEHP Preferred Health Care Plan will pay 7 percent of bi-weekly premium payments." Mr. Nielson indicated he believed that the intent language does not refer to current retirees.

Sen. Mayne indicated that the rule does not comply with statute and that the intent language is not made clear in the statute. He noted that a rule does not surpass statute.

**MOTION:** Rep. Gowans moved to refer the issue to the retirement committee for further review. The motion passed unanimously.

### **3. R861-1A-21 Rulings by the Commission**

Chair Stephenson explained that the previous rule, before the 1997 change, indicated that a tie vote rendered by the four-member Utah State Tax Commission would be ruled to be in favor of the tax payer. He indicated that concern was raised regarding a change in the rule which now states that "[t]he party with the burden of proof or the burden of overcoming statutory presumption shall prevail only if a majority of the participating commissioners rules in that party's favor."

Ms. Pamela Hendrickson, Chair, Utah State Tax Commission, provided background on the issue. She indicated that a Utah Supreme Court case brought about a discussion of revising the Commission's rules. She explained that the comment period of the rule when it was proposed had no record of disagreement with the change of the ruling for a tie vote.

Mr. Bruce Johnson, Commissioner, Utah State Tax Commission, indicated that the burden of preponderance of the evidence is on the individual or entity which appeals the decision. He explained that appeals brought to the Utah State Tax Commission are from all sources, including County Boards of Equalization. He stated that it is important in analyzing the situation to distinguish when the Commission is the assessing body and when the Commission is acting in a review capacity on what another agency has assessed.

Ms. Hendrickson indicated that the Commission will meet in its rulemaking capacity to review the rule further and receive further public input.

Mr. Mark Buchi, attorney, Holme Roberts & Owen LLP, questioned the rule's compliance with the Utah Supreme Court ruling on tax appeals. He indicated that many taxpayers do not have the resources to appoint counsel to review these issues on their behalf and that many taxpayers are not informed enough about the issues to understand what options are available to them.

Chair Stephenson expressed concern that the rule was changed without direction by a statutory change. He indicated that the Commission and the public may benefit from renewed discussion of the rule.

### **4. Medicaid Rules:**

#### **R414-5 Reduction in Outlier Reimbursements**

#### **R414-63 Medicaid Policy for Pharmacy Reimbursement**

#### **R414-304 Income and Budgeting**

Chair Stephenson indicated that these rules were brought to his attention because pharmacies may have difficulty complying with the new emergency rule issued by the Department of Health regarding reimbursement schedules.

Rep. Rebecca Lockhart, member, Health and Human Services Appropriations Subcommittee, indicated that the issue is whether the Department has statutory authority to make rules which she believes reflect significant policy decisions made without legislative oversight or direction.

Mr. Michael Deily, Director, Division of Health Care Financing, explained that program changes were necessary in order to comply with the reduction in budget due to caseload increases. He indicated that in order to meet budget reduction, program changes were needed, including the amount and types of services provided and cost share. Mr. Deily noted that federal statute regulates the amount of co-payments that can be required of Medicaid recipients. He explained that hospital and pharmacy reimbursements have been reduced and that the Department has the authority to make these decisions. He distributed "Survey Results of Dispensing Fees and Average Wholesale Price Discounts."

Mr. Rod Betit, Executive Director, Department of Health, emphasized that the rules were due to a budget reduction as a result of caseload increases. He noted that caseloads are not moderating. He stated that the program was budgeted for 6 percent growth and the growth is approximately 8 percent.

Mr. David Gessel, Utah Hospitals and Health Care Association, opined that the problem is that the Department does not have all the information needed in making policy decisions. He stated that the parties involved would benefit from a more broad and open discussion regarding the break-out of Medicaid spending and programs.

Mr. James Olsen, Retail Merchants Association and Food Industry Association, indicated that there has been no inflationary adjustments in pharmacy reimbursements for the last 10 years. He distributed an article from *The Salt Lake Tribune*, January 14, 2003, "Rite Aid Might Dump Medicaid Unless State Increases Payment."

Mr. Mark Shaytel, Vice President of Operations, Pharmacy Association, Albertsons Incorporated, expressed concern about the reduction in reimbursements to pharmacies. He explained that Utah's Unfair Practices Act indicates that merchants cannot sell products below cost, but that due to the reduction in reimbursement for Medicaid prescriptions and the increased co-payment for Medicaid recipients, many pharmacies will be forced to sell prescriptions below costs because pharmacies cannot deny prescriptions due to an inability to pay.

Mr. Mike Wood, President, Superior Care Pharmacy, distributed a letter from Superior Care Pharmacy, Inc. to committee members.

Mr. Val Bateman, Utah Medical Association, provided figures from a recent survey of medical providers on acceptance of new patients and new medicaid patients. He indicated that a discrimination is present regarding the percentage of Medical providers who are willing to accept new Medicaid patients. He

expressed concern that the lack of acceptance of these patients is a direct result of reimbursement cuts. He distributed "Survey of Primary Care Physicians Participation in Medicare and Medicaid."

Chair Stephenson questioned whether anyone present felt the proposed rule does not comply with statute. He indicated that since there was no objection, Rep. Lockhart may wish to pursue this item further with legislation.

## **5. Committee Legislation–Discussion and Vote**

Chair Stephenson indicated that, due to the lack of a quorum, he intends to call a meeting during the 2003 General Session to discuss and vote on committee legislation.

## **6. Other Items / Adjourn**

Chair Stephenson indicated that Mr. Kelly Atkinson, Executive Director, Utah Health Insurance Association, recently brought an issue to his attention and asked Mr. Atkinson to brief the Committee on this issue. He asked the Committee to decide if this issue should be discussed in its next meeting or in the 2003 Interim.

Mr. Atkinson stated that health insurance companies in Utah are regulated by the Utah Insurance Department, which has rulemaking authority. He explained that the Department, in responding to several complaints, initiated a rule which, he believes, is not founded in statute. He indicated that the rule states that when a child of divorce is outside of a service area for a health insurance contract, the contract must be covered as if it were inside the service area.

Rep. Newbold indicated that the rule could be on the next agenda for discussion, but indicated that prior business which has not been discussed should be considered first.

**MOTION:** Rep. Gowans moved to adjourn the meeting. Due to the lack of a quorum, Chair Stephenson adjourned the meeting at 12:13 p.m.